

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

FW

NUMBER 2014 CA 1556

SHAMEKIA AND CEON SAUCEBERRY,
INDIVIDUALLY AND ON BEHALF OF THEIR MINOR
CHILDREN, CEON SAUCEBERRY, JR., TRE'VEON
SAUCEBERRY AND JOURNE' SAUCEBERRY

VERSUS

CRAIG WEBRE, IN HIS OFFICIAL CAPACITY AS
SHERIFF OF THE PARISH OF LAFOURCHE, THE
LAFOURCHE PARISH SHERIFF'S OFFICE, DEPUTY
DANNY TOUPS, ABC INSURANCE COMPANY
AND XYZ INSURANCE COMPANY

Judgment Rendered: JUN 05 2015

Appealed from the
17th Judicial District Court
In and for the Parish of Lafourche, Louisiana
Trial Court Number 118259

Honorable Walter I. Lanier, III, Judge

Michael C. Palmintier
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Baton Rouge, LA

Attorneys for Appellants
Plaintiffs – Shamekia Sauceberry and
Ceon Sauceberry, et al.

Donald F. Harang, Jr.
Larose, LA

Attorney for Appellees
Defendants – Craig Webre, et al.

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

22P Pettigrew, J. Concurs.
J Chutz, J. Concurs.

WELCH, J.

Plaintiffs, Shamekia Sauceberry and Ceon Sauceberry, individually and on behalf of their minor children, appeal a judgment dismissing their tort claims against defendants, Craig Webre, in his capacity as the Sheriff of the Parish of Lafourche, The Lafourche Parish Sherriff's Office (LPSO), Deputy Danny Toups, and Old National Insurance Company. We reverse and remand.

BACKGROUND

On August 10, 2011, plaintiffs filed this lawsuit against Craig Webre, in his official capacity as the Sheriff of the Parish of Lafourche, LPSO, Deputy Toups, and two unidentified insurance companies, seeking to recover damages for an injury Mrs. Sauceberry sustained while participating in a Rape Aggression Defense (RAD) self-defense course taught by LPSO. Defendants Webre, Toups, and Old National Insurance Company answered the lawsuit and raised the affirmative defenses of qualified immunity and discretionary immunity. Bridgefield Casualty Insurance Company, Inc. intervened in the lawsuit, seeking repayment of all workers' compensation benefits paid to and on behalf of Mrs. Sauceberry as a result of her injury.

In 2010, Mrs. Sauceberry was employed by Start Corporation. LPSO taught the three-day RAD course at the Start facility from August 10 through August 12, 2010. During the RAD course, Mrs. Sauceberry and her co-workers received instruction for two days and on the third day, they engaged in a series of exercises simulating attacks upon them by "aggressors," in which they were given the opportunity to deploy the defensive techniques they had learned. During a simulated attack on Mrs. Sauceberry, in which Deputy Toups played the role of the assailant, Mrs. Sauceberry's arm was broken. Mrs. Sauceberry underwent surgery to repair the comminuted fracture, during which two plates and 21 screws were inserted into Mrs. Sauceberry's arm.

The RAD simulations were recorded¹ and the video recordings of the simulation resulting in Mrs. Sauceberry's injury were played during the bench trial. The court found that the RAD instructors were not negligent in causing Mrs. Sauceberry's injury. In written reasons for judgment, the court stated that it is not negligent to have a self-defense course taught by a Sheriff's Office, which involves physical contact between an officer and a citizen. The court then found that Deputy Toups and Lucy Morvant, a LPSO reserve deputy who taught the course, were not negligent in their efforts and actions in instructing, teaching, and acting out real life scenarios. With respect to Mrs. Morvant, the court found that she adequately informed Mrs. Sauceberry as to how the scenario would take place and adequately trained Mrs. Sauceberry on how to perform self-defense techniques. The court also noted that the video showed that Mrs. Morvant was within a few feet of Mrs. Sauceberry when she was engaged in the scenario and Mrs. Morvant was giving instructions to Mrs. Sauceberry on how to perform techniques during the scenario.

With respect to Deputy Toups, the court stated that after viewing the video containing the simulation during which Mrs. Sauceberry was injured, it did not see any negligent behavior on Deputy Toups's part. The court noted that it appeared from the video that Mrs. Sauceberry's arm was broken while she and Officer Toups were standing up. The court also stated that the video showed that during the scenario, Mrs. Sauceberry was able to break free from Deputy Toups's initial bear hug, but then began pushing Deputy Toups instead of using the defense tactics; Deputy Toups and Mrs. Sauceberry began to push on each other, and very shortly after the pushing began, while standing, Mrs. Sauceberry screamed that she is hurt. The court concluded that after watching the video, the only way that

¹ Two CDs were introduced into evidence. One is a long version, depicting multiple simulations conducted on the day in question, while the other CD depicts only the simulation during which Mrs. Sauceberry was injured.

Officer Toups could have prevented the injury would have been to not engage physically with the participants and to not provide any sort of realistic resistance to the individual who is being taught to defend against rapes and aggressive behaviors of criminals.

On August 18, 2014, the trial court signed a judgment stating that the defendants, Craig Weber, et al., were dismissed with prejudice. Plaintiffs appealed this judgment. On December 19, 2014, this court issued a Rule to Show Cause as to whether or not the appeal should be dismissed, as it appeared the judgment lacked appropriate decretal language disposing of the matter and/or dismissing the other defendants in the litigation. On January 5, 2015, the trial court signed an amended judgment denying plaintiffs claims and dismissing those claims against “defendants Craig Webre, in capacity as Sheriff of the Parish of Lafourche, The Lafourche Parish Sheriff’s Office, Deputy Danny Toups and Old National Insurance Company.” On February 9, 2015, another panel of this court maintained the appeal, but reserved a final determination as to whether the appeal was to be maintained to the panel to which the appeal was assigned. **Sauceberry v. Webre**, 2014-1556 (La. App. 1st Cir. 2/9/15)(unpublished action). As the amended judgment cured the decretal language defect by dismissing all of the plaintiffs’ claims against all of the defendants in this litigation, we maintain the appeal.

DISCUSSION

Plaintiffs submit that the trial court erred in failing to find that a duty existed given the facts and circumstances of this case and that the court erred as a matter of law and fact in failing to find that plaintiffs presented sufficient evidence to show that the defendants breached a duty to Mrs. Sauceberry. We agree that the trial court erred in absolving the defendants from any liability in this case.

Louisiana courts employ the duty-risk analysis in order to determine legal responsibility in negligence cases. **Boykin v. Louisiana Transit Co., Inc.**, 96-

1932 (La. 3/4/98), 707 So.2d 1225, 1230. This determination usually requires proof of five separate elements: (1) the defendant had a duty to conform his conduct to a specific standard (the duty element); (2) the defendant's conduct failed to conform to the appropriate standard (the breach element); (3) the defendant's substandard conduct was a cause-in-fact of the plaintiff's injuries (the cause-in-fact element); (4) the defendant's substandard conduct was a legal cause of the plaintiff's injuries (the scope of liability or scope of protection element) and (5) proof of actual damages (the damages element). *Id.*

There is an almost universal duty on the part of a defendant to use reasonable care so as to avoid injury to another. **Boykin**, 707 So.2d at 1231. In some cases, the duty is refined more specifically so that the defendant must conform his or her conduct to some specifically defined standard of behavior. Duty is generally a question of law. *Id.* Whether a legal duty to protect against the particular risk is owed by one party to another depends on the facts and circumstances of the case and the relationship of the parties. **Straley v. Calonge Drayage & Storage, Inc.**, 346 So.2d 171, 176 (La. 1977).

The RAD self-defense class taught by LPSO used trained law enforcement personnel to simulate abductions or attacks on the female participants, thus requiring that the law enforcement personnel come into direct physical contact with the females participating in the simulations. There is no doubt that RAD's self-defense classes have a clear social value and a laudable purpose. The simulated attacks afford the participants an opportunity to deploy the defensive techniques they have been taught during the course to fend off and escape from attackers, which could save them from danger in the event of an actual attack or abduction. However, it is undeniable that the direct physical contact engaged in between the trained law enforcement personnel and the participants exposes the participants to a heightened risk of injury. At a minimum, the LPSO and its RAD

instructors owed a duty to conduct the simulations in a manner that did not expose the participants to an unreasonable risk of harm. See Boykin, 707 So.2d at 1231.

The next element of the duty-risk analysis, breach of duty, generally is a question of fact, but may be a mixed question of law and fact. *Id.* A determination of whether a defendant violated its duty of reasonable care includes balancing the probability and seriousness of any expected injury with the burden of taking adequate precautions against the risk of injury and any adverse consequences of such precautions. *Id.* As a general rule, a reviewing court is required to accord great deference to the facts found and the inferences drawn by the trier of fact. *Id.* While there was considerable testimony on the events leading up to Mrs. Sauceberry's injury, including expert testimony offered by the plaintiff, the trial court's finding that Deputy Toups was not negligent was not based on its evaluation of that testimony. Instead, the trial court's ultimate determination that Deputy Toups was not negligent was based on its observation of the video of the simulation. The trial court also based its determination that Mrs. Morvant was not negligent during the simulation based on its viewing of the simulation video. Our review of the videos convinces us that the trial court committed manifest error in finding that the RAD instructors were not negligent in causing Mrs. Sauceberry's injury.

The videos reflect that Mrs. Sauceberry and Deputy Toups participated in an exercise simulating an abduction at an ATM machine, vending machine, or while taking something out of a car. Deputy Toups, who is significantly taller and heavier than Mrs. Sauceberry,² approaches Mrs. Sauceberry from behind and places her in a bear hug. Mrs. Sauceberry breaks free of the bear hug, turns around, and Deputy Toups places her in a front bear hug. As instructed by Mrs.

² At the time of the simulation, Deputy Toups was 6'1" and weighed 320 pounds, while medical records indicate that Mrs. Sauceberry is 5'4".

Morvant, Mrs. Sauceberry deploys a knee kick and is prompted by Mrs. Morvant to deploy another defensive technique. Mrs. Sauceberry struggles against Deputy Toups's bear hug and pushes against him, and Deputy Toups is heard saying, "You're not gonna push me, you're not gonna push me." Deputy Toups pushes against Mrs. Sauceberry with his body and Mrs. Sauceberry continues to push against Deputy Toups. As the two struggle against each other, Deputy Toups leans into Mrs. Sauceberry with his body, pushing Mrs. Sauceberry backwards, and his left hand moves from Mrs. Sauceberry's back onto her right arm. Mrs. Sauceberry goes down to her knees, and while Deputy Toups is over her and still holding onto Mrs. Sauceberry, a loud popping sound is heard. Mrs. Sauceberry screams that she broke her arm, Deputy Toups releases his hold on her; and she collapses to the floor.

Although we are mindful that the RAD program serves a valid social purpose and that the simulations must necessarily involve some physical contact, the videos demonstrate that the method in which the simulation was conducted in this case exposed Mrs. Sauceberry to an unreasonable risk of injury. The entire exercise was fraught with the potential for injury.³ Deputy Toups displayed a level of force and aggressiveness during the simulated attack on Mrs. Sauceberry that was clearly inappropriate, unnecessary, and went well beyond the bounds of what could have been reasonably anticipated or expected by the students who agreed to participate in the simulations. His overly aggressive conduct in response to Mrs. Sauceberry's attempt to fend off his simulated attack, at the urging of Mrs. Morvant, was unreasonable. Further, we find that when the pushing engaged by Deputy Toups became overly aggressive, Mrs. Morvant, who was responsible for monitoring safety issues during the simulations, allowed the situation to escalate

³ In addition to Mrs. Sauceberry's injury, one participant is seen falling to the unpadded floor during a simulation.

instead of stopping it. Her failure to stop the simulation when Deputy Toups began to forcefully struggle with and push Mrs. Sauceberry also breached LPSO's duty to conduct the simulations in a manner that did not present an unreasonable risk of harm to participants such as Mrs. Sauceberry.

The causation and damage elements of the duty-risk analysis are easily met. The breach of the standard of care by the RAD instructors caused Mrs. Sauceberry to sustain a broken arm. The duty on the part of LPSO and its RAD instructors to conduct simulations in a manner that did not present an unreasonable risk of harm to the participants clearly encompassed the risk that one of the participants would break a bone or otherwise be injured while engaging in the simulated exercises. Lastly, as a result of the breach of that duty, Mrs. Sauceberry's arm was broken, causing her to sustain damages as a result.

The trial court's ruling that the RAD officers' conduct was not negligent mooted three issues: the defendants' immunity defenses, the intervention claim, and plaintiffs' damage claim. Because we have reversed the trial court's ruling, we remand this case to the trial court to rule on these issues.

CONCLUSION

For the above reasons, we conclude that the trial court erred in its liability determination and we reverse the judgment dismissing plaintiffs' claims. We remand the case to the trial court for proceedings consistent with this opinion.

REVERSED AND REMANDED.